

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BUZZFEED INC.,)
111 East 18th Street, 13th Floor)
New York, NY 10003)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF JUSTICE,)
950 Pennsylvania Avenue, NW)
Washington, D.C. 20530)
)
FEDERAL BUREAU OF)
PRISONS,)
320 First Street, NW)
Washington, D.C. 20534)
)
Defendants.)

COMPLAINT

1. Plaintiff BUZZFEED INC. files this Freedom of Information Act suit to force Defendants U.S. DEPARTMENT OF JUSTICE and FEDERAL BUREAU OF PRISONS to produce records related to the acquisition and selection of lethal injection drugs used by the federal government to implement the death penalty. Defendants implausibly claim that releasing even a single document on this subject would interfere with law enforcement proceedings.

PARTIES

2. Plaintiff BUZZFEED INC. is a member of the media and made the FOIA requests at issue in this case.

3. Defendant U.S. DEPARTMENT OF JUSTICE (“DOJ”) is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

4. Defendant FEDERAL BUREAU OF PRISONS (“BOP”) is a federal agency and component of DOJ and is subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

5. This case is brought under 5 U.S.C. § 552(a)(6)(c)(i) and presents a federal question conferring jurisdiction on this Court.

6. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

BACKGROUND

7. A number of drug suppliers have begun taking measures to ensure that their products are not used for executions.¹

8. Some states seeking to perform executions have obtained lethal injection drugs from sources that were unlicensed,² had committed pharmaceutical violations in the past,³ had no drugmaking experience,⁴ or had been shut down for selling opioids and other drugs illegally.⁵

9. In at least one instance, the federal government has blocked the importation of lethal injection drugs into the country.⁶

¹ See, e.g., Pfizer’s Position on Use of Our Products in Lethal Injections for Capital Punishment, Pfizer (Sept. 2017), https://www.pfizer.com/files/b2b/Global_Policy_Paper_Lethal_Injection_Sept_2017.pdf.

² Chris McDaniel, *Missouri Fought For Years To Hide Where It Got Its Execution Drugs. Now We Know What They Were Hiding.*, BuzzFeed News (Feb. 20, 2018), https://www.buzzfeed.com/chrismcdaniel/missouri-executed-17-men-with-drugs-from-a-high-risk?utm_term=.gv5kMDILP#.onbAQg8Vx.

³ *Id.*

⁴ Chris McDaniel, *This is the Man in India Who is Selling States Illegally Imported Execution Drugs*, BuzzFeed News (Oct. 20, 2015), https://www.buzzfeed.com/chrismcdaniel/this-is-the-man-in-india-who-is-selling-states-illegally-imp?utm_term=.fcZwED75a#.uy3RGAJOz.

⁵ Chris McDaniel, *Texas Almost Bought Execution Drugs From 5 Men in India Who Were Accused of Selling Illegal Party Pills*, BuzzFeed News (Jan. 26, 2017), https://www.buzzfeed.com/chrismcdaniel/texas-almost-bought-execution-drugs-from-5-guys-overseas-who?utm_term=.kh4XWVNJz#.ggy6X5e8D.

⁶ Chris McDaniel & Chris Geidner, *Arizona, Texas Purchased Execution Drugs Illegally Overseas, But FDA Halts the Import*, BuzzFeed News (Oct. 22, 2015), https://www.buzzfeed.com/chrismcdaniel/arizona-texas-purchased-execution-drugs-illegally?utm_term=.itwmD32zL#.hewYedGqX.

DEFENDANTS' FOIA VIOLATION

10. Pursuant to FOIA, BUZZFEED requested from BOP, for a two-year period, records related to efforts by BOP to select and obtain lethal injection chemicals. A true and correct copy of the full request, which has been paraphrased here, is attached as Exhibit A.

11. BOP denied the request in full, claiming that every single responsive record was exempt under a variety of exemptions. A true and correct copy of the denial is attached as Exhibit B.

12. In response to BUZZFEED's administrative appeal, DOJ affirmed BOP's denial based solely on Exemption 7(A), which applies to "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings." A true and correct copy of the appeal determination is attached as Exhibit C.

13. Release of records about the government's efforts to obtain lethal injection chemicals will not interfere with any law enforcement proceedings, and DOJ and BOP have provided no details to the contrary.

COUNT I – VIOLATION OF FOIA

14. The above paragraphs are incorporated herein.
15. Defendants DOJ and BOP are agencies subject to FOIA.
16. Plaintiff made a FOIA request to Defendants for agency records of Defendants.
17. One or more of the requested record are not exempt from disclosure.
18. Defendants have failed to produce the requested records.

WHEREFORE, Plaintiff asks the Court to:

- i. Order Defendants to conduct a reasonable search for records and to produce all non-exempt requested records;

- ii. Award Plaintiff attorney fees and costs; and
- iii. Enter any other relief the Court deems appropriate.

DATED: June 29, 2018

Respectfully Submitted,

/s/ Matthew Topic

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